By the great weight of authority, where one deposits in a bank checks drawn or endorsed by himself, in a fiduciary or representaive capacity, to his personal credit and later checks on such funds in payment of his personal debts to third persons, the bank is not liable to the beneficial owner for the funds thus misappropriated; since the fiduciary has the absolute right to decide the place and the manner in which he shall keep the trust fund. *Batchelder* v. *Central National Bank,* 188 Mass. 25, 73 N. E. 1024; *Safe-Deposit Trust Co.* v. *Diamond National* Bank, 194 Pa. St. 334, 44 Atl. 1064; *Goodwin* v. *American National Bank,* 48 Conn. 550; *Gate City Building and Loan Assn.* v. *National Bank,* 126 Mo. 82, 28 S. W. 633, 47 Am. St. Rep. 630, 27 L. R. A. 401. *Contra, United States Fidelity & Guaranty Co.* v. *People's Bank,* 127 Tenn. 720, 157 S. W. 414; *Bank of Hickory* v. *McPherson,* 102 Miss. 852, 59 South. 934.

Although, under such circumstances, the bank is chargeable with notice that money belonging to a trust fund stands on its books to the personal account of the fiduciary, it is not chargeable with notice that the fiduciary is applying the trust funds to the payment of his personal debts, unless the bank itself receives such funds in payment of a personal obligation of the fiduciary to it. To make a bank liable to the cestui qui trust for all trust money, deposited on the personal account of the fiduciary and paid on order of his personal checks to third parties in settlement of his personal debts, is a far greater responsibility than the law exacts from the bank to its depositors. See MORSE, BANKS AND BANKING, 3rd Ed., § 317.

Although the bank receives no part of the trust funds, which have been deposited to the fiduciary's personal account in payment of such fiduciary's personal obligations to it, the bank is nevertheless liable, if it has been an active participant in the fraud. *Lowndes* v. *City National Bank,* 82 Conn. 8, 72 Atl. 150, 22 L. R. A. (N. S.) 408; *National Bank* v. *Munger,* 36 C. C. A. 659, 95 Fed. 87.

A somewhat more difficult situation arises when, at the time the deposit is made, the fiduciary's personal account is overdrawn. The decisions are in harmony to the extent that the bank is liable, if such funds are deposited in payment of an overdraft and for the specific purpose of discharging or reducing the overdraft. *Pannell* v. *Hurley,* 2 Coll. C. C. 241; *Washburn* v. *Linscott, State Bank,* 87 Kan. 698, 125 Pac. 17; *Lowndes* v. *City National Bank, supra; Allen* v. *Puritan Trust Co.,* 211 Mass. 409, 97 N. E. 916, L. R. A. 1915C, 518. Where fiduciary funds are received by the bank to be deposited to the fiduciary's personal account, which is at the time overdrawn, but such deposit be received in the regular course of business and not at the instance of the bank, so that the bank is not privy to the transaction, it is held in England that the incidental benefit received by the bank in the payment of the overdraft will not make it liable to the cestui qui trust. *Gray* v. *Johnston,* L. R. 3 Eng. Ir. App. 1, (1868) L. R. 3 H. L. 1, 16 W. R. 842; *Coleman* v. *Bucks & Oxen Union Bank,* 66 L. J. Ch. 564, (1897) L. R. 2 Ch. 243, 76 L. T. 684, 45 W. R. 616. This distinction is probably not drawn in this country. See *Allen* v. *Puritan Trust Co., supra.*

CONTRACTS OF EMPLOYMENT—UNCERTAINTY OF CONSIDERATION—DAMAGES. —The plaintiff entered the employment of the defendant under a con-

tract whereby the latter agreed to give the plaintiff, in addition to his wages, a fair share of the profits, to be determined on the first of January. *Held,* the agreement is too vague and indefinite to furnish a right of action against the defendant, for a breach of the contract in discharging the plaintiff before the first of January. *Varney* v. *Ditmas* (N. Y.), 111 N. E. 822.

It is fundamental to the validity and enforcement of a contract that the agreement of the parties be sufficiently explicit and definite to ascertain their intention with a reasonable degree of certainty. Thus, if the agreement is so uncertain and vague that it is impossible for the court to fix the legal liability of the parties, damages for the breach of the contract cannot be obtained. *United Press* v. *N. Y. Press Co.,* 164 N. Y. 406, 58 N. E. 527, 53 L. R. A. 288; *Butler* v. *Kammerer,* 218 Pa. 242, 67 Atl. 332; *Parsons* v. *Trask,* 7 Gray (Mass) 473, 66 Am. Dec. 502. This rule, however, is subject to the maxim, *Id certum est quod certum reddi potest. Carnig* v. *Carr,* 167 Mass. 544, 46 N. E. 117, 57 Am. St. Rep. 488, 35 L. R. A. 512; *Thompson* v. *Stevens,* 71 Pa. 161; *Caldwell* v. *School Dist.,* 55 Fed. 372. And is further qualified by the fact that the law does not favor the destruction of contracts for uncertainty, and will give effect to the agreement of the parties if possible. *McIntyre Lumber & Export Co.* v. *Jackson Lumber Co.,* 165 Ala. 268, 51 South. 767, 138 Am. St. Rep. 66.

The question whether such words, as fair and reasonable, have a definite and enforceable meaning, so as to make them the basis of a legal obligation, will depend upon the subject to which they refer and the facts surrounding the particular case. *Noble* v. *Joseph Burnett Co.,* 208 Mass. 75, 94 N. E. 289; *Silver* v. *Graves,* 210 Mass. 26, 95 N. E. 948; *Bluemner* v. *Garvin,* 120 App. Div. 29, 104 N. Y. Supp. 1009. See also, *Acebal* v. *Levy,* 10 Bing. 376, 383. Contracts which expressly provide for a reasonable price or for a reasonable salary are not vague and indefinite. What is a reasonable price or salary is a question of fact to be determined in the light if the circumstances of each case. *Greene* v. *Lewis,* 85 Ala. 221, 4 South. 740, 7 Am. St. Rep. 42; *Wehner* v. *Bauer,* 160 Fed. 240. See also, *Silver* v. *Graves, supra; Acebal* v. *Levy, supra.* An agreement whereby one party promises to pay good wages has been held void for uncertainty. *Fairplay School Township* v. *O'Neill,* 127 Ind. 95, 26 N. E. 686. So also, an agreement to perform certain services for such remuneration as shall be deemed right is too indefinite to award damages for a breach thereof. *Taylor* v. *Brewer,* 1 M. & S. 290; *Roberts* v. *Smith,* 4 H. & N. 315; *Mackintosh* v. *Thompson,* 58 App. Div. 25, 68 N. Y. Supp. 492. A promise to pay a fair share of the commissions from a certain transaction was held too vague to import a legal obligation. *Bluemner* v. *Garvin, supra.* And where the plaintiff was to receive a part of the profits upon a very liberal basis, in addition to his salary, the court held that since there was no standard by which to measure the degree of liberality, the contract was incomplete and unenforceable. *Butler* v. *Kammerer, supra.* But a contract to pay a fair and equitable share of the net profits has been regarded as sufficiently definite to maintain a bill in equity for an account. *Noble* v. *Joseph Burnett Co., supra.* Yet it has been held that an agreement to give such a share of

the profits, as would be satisfactory, is too indefinite to be enforced. *Mackintosh* v. *Kimball,* 101 App. Div. 494, 92 N. Y. Supp. 132. On the other hand, an agreement to pay what is right is not necessarily indefinite. *Silver* v. *Graves, supra.* Nor is a promise by one that he would make it right. *Brennan* v. *Employer's Liability Assur. Corp.,* 213 Mass. 365, 100 N. E. 633. Plainly, a promise to give the plaintiff, for services to be rendered, as much as any other relation on earth, is also too indefinite to be enforced. *Graham* v. *Graham,* 10 Casey (Pa.) 475. But a contract to provide for one so that she would not have to work is sufficiently certain and valid. *Thompson* v. *Stevens, supra.* While a promise to pay part of the money paid is too uncertain to be dealt with by the courts. *Burney* v. *Jones,* 140 Ga. 758, 79 S. E. 840.

Damages cannot be awarded when the extent of the liability cannot be made certain. *East Line, etc., R. Co.* v. *Scott,* 72 Tex. 70, 10 S. W. 99, 13 Am. St. Rep. 758. But because the amount cannot be ascertained until the end of the year does not necessarily make the contract uncertain. *Fraker* v. *A. G. Hyde & Son.,* 135 App. Div. 64, 119 N. S. Supp. 879. And even though a part of the agreement be void, if that which remains is sufficient to constitute a complete contract in itself, it will be enforced. See *State* v. *Racine Sattley Co.* (Tex. Civ. App.), 134 S. W. 400. In all of these cases where services have been rendered, though there cannot be a recovery on the contract itself, where it is held to be indefinite and vague, yet the reasonable value of the services may be recovered on a quantum meruit. See *United Press* v. *N. Y. Press Co., supra; Bluemner* v. *Garvin, supra; Petze* v. *Morse Dry Dock & Repair Co.,* 125 App. Div. 267, 109 N. Y. Supp. 328.

CORPORATIONS—FRAUDULENT TRANSFER OF ASSETS—RIGHTS OF CREDITORS.—A corporation controlled by persons owning the controlling interest in another corporation, having incurred liability for a tort, transferred its assets to the second company for an inadequate consideration. The injured party brought an action against both corporations. *Held,* both the transferror and transferee are liable. *Wolff* v. *Shreveport Gas, Electric Light & Power Co.* (La.), 70 South. 789. See NOTES, p. 632.

EASEMENTS—CREATION—WAY BY NECESSITY.—As directed by the testator's will, certain property was divided into two tracts, one of which was assigned to the plaintiff, and one to the defendant. At the time of the partition, the plaintiff's tract was bounded by a public road leading to the village from which road a private driveway led to his residence. There was also a way across defendant's land, which was a more convenient mode of reaching the village than by the other method. The plaintiff later sold that part of his tract fronting on the public road and through which the private driveway extended, and subsequently claimed a right of way by necessity across the defendant's land to the village. *Held,* the plaintiff is not entitled to the right of way. *Turner* v. *South & West Improvement Co.* (Va.), 88 S. E. 85.

It is well settled that where a tract of land is accessible only over the property of the grantor or of third persons, a right of way by necessity will arise by implication over the lands of the grantor, since otherwise